

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

PETER MILLER, CLIFFORD HOYT, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.

Plaintiffs,

V.

PATRICK TREDO and CHEMIMAGE CORP.

Defendants.

Case No. 05-10367 RWZ

**DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY OR IN THE
ALTERNATIVE REQUEST FOR ORAL ARGUMENT**

Defendants Patrick Treado and ChemImage Corp. respectfully move this Court under LR 7.2 for leave to file a Sur-Reply Memorandum In Opposition To Plaintiff's Motion To Amend Complaint [D.E. 40]. In the alternative, Defendants request oral argument on the pending motions. As grounds for this request, Defendants state the following:

The memorandum required by LR 7.1(b)(1) is incorporated herein.

Pursuant to LR 7.1(a)(2), Defendants' counsel asked Plaintiffs' counsel for their assent to file a Motion for Leave to File a Sur-Reply or in the Alternative Request Oral Argument in response to Plaintiffs' Reply [D.E. 61]. Counsel for Plaintiffs indicated they would oppose the motion.

Plaintiffs filed a Motion for Leave to File an Amended Complaint [D.E. 40] on May 18, 2006. In response, Defendants filed an Opposition to Plaintiffs Motion for Leave to File an Amended Complaint [D.E. 55] on June 21, 2006.

On July 6, 2006, Plaintiffs filed a Reply [D.E. 61] Brief to Defendants' Opposition [D.E. 55] to Plaintiffs' Motion for Leave to File an Amended Complaint [D.E. 40].

Defendants now seek leave to file a Sur-Reply or in the Alternative Request Oral Argument to address numerous new issues raised for the first time in Plaintiffs' Reply [D.E. 61] as well as mistakes of law and fact contain in Plaintiffs' Reply [D.E. 61].

In particular, Plaintiffs' Reply fails to provide any explanation for their delay, never mind provide any "good cause" under Rule 16(b), in seeking to amend the Complaint. Plaintiffs attempt to rely solely on an argument concerning post-complaint "events" (i.e., the reissue application and the pending patent applications filed by Defendants) not raised in their initial have little to no nexus to Plaintiffs' proposed new counts, and thus completely fail to justify Plaintiffs' delay in pleading matters that were known to Plaintiffs at the time of their initial complaint.

Moreover, Plaintiffs' count 4 (fraud), 6 (conversion) and 9 (civil conspiracy) were never asserted nor even suggested in the allegations in the original Complaint, thus they cannot relate back to the filing of the Complaint and are barred as untimely.

On this basis, Defendants respectfully request leave to file a Sur-Reply or in the Alternative Request Oral Argument.

Respectfully submitted,

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

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July 19, 2006

LOCAL RULE 7.1 CERTIFICATION

Pursuant to 7.1(A)(2), the undersigned certifies that counsel for the defendants have attempted to confer with counsel for plaintiffs regarding the issues raised in the foregoing motion. Counsel for the plaintiffs indicated they would oppose the motion.

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on July 19, 2006.

/s/ Anthony J. Fitzpatrick
Anthony J. Fitzpatrick